

verdict whether it be murder in the first or second degree; but if such person be convicted by confession, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and to give sentence accordingly; and every person liable to be prosecuted for petit treason shall in future be indicted, proceeded against and punished as is directed in other kinds of murder, according to the degree.

In a trial for murder, a verdict of "guilty" is insufficient, since the jury must determine in their verdict the degree of the crime. Where opinion of the trial court set out in the record shows that the jury did not at any time find prisoner "guilty of murder in the first degree," a judgment sentencing prisoner to be hanged may be reviewed, although docket entries show a verdict in due form of "guilty of murder in the first degree." In case of a mistrial, the indictment being good, prisoner may be tried anew on same indictment. *Ford v. State*, 12 Md. 543. And see *Williams v. State*, 60 Md. 403.

Traverser is entitled as a matter of right to a poll of the jury, and may only be convicted upon concurrence of each juror. How a poll should be conducted. *Williams v. State*, 60 Md. 403. And see *Ford v. State*, 12 Md. 543.

See notes to sec. 397.

An. Code, sec. 368. 1904, sec. 335. 1888, sec. 216. 1809, ch. 138, sec. 4. 1908, ch. 115. 1916, ch. 214.

**403.** Every person convicted of murder in the first degree, his or her aiders, abettors and counsellors, shall suffer death, or undergo a confinement in the penitentiary of the State for the period of their natural life, in the discretion of the Court before whom such person may be tried; provided, however, that the jury in a murder case who render a verdict of murder in the first degree, may add thereto the words "without capital punishment," in which case the sentence of the court shall be imprisonment for life, and in no case where a jury shall have rendered a verdict in manner and form as hereinbefore prescribed, "without capital punishment," shall the court in imposing the sentence, sentence the convicted party to pay the death penalty.

See notes to sec. 397.

An. Code, sec. 369. 1904, sec. 336. 1888, sec. 217. 1809, ch. 138, sec. 4.

**404.** Every person convicted of the crime of murder in the second degree, or as accessory thereto, shall be sentenced to the penitentiary for not less than five nor more than eighteen years.

See notes to sec. 397.

### **Death Penalty.**

1922, ch. 465, sec. 1.

**405.** If an offender, on conviction, may be sentenced to suffer death, the Court before whom such offender shall be tried and convicted, shall sentence him to suffer death by hanging by the neck; and when a case has been removed for trial and the party shall be sentenced to be hung, the Court shall remand him to the place where the indictment was found, where such offender shall remain in the custody of the Sheriff of that county or city for disposition as hereinafter provided.

See secs. 565 and 566.